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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

SEP 29 2003

Federal Communication Commission
Bureau / Office

In the Matter of

Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Marathon and Sugarloaf Key, Florida))

MB Docket No. 03-
RM -

To: Chief, Office of Broadcast License Policy
Audio Division
Media Bureau

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Federal Communication Commission
Office of the Secretary

PETITION FOR RULE MAKING

LSM Radio Partners LLC ("LSM Radio"), licensee of WAVK(FM), Marathon, Florida, by its counsel, hereby submits this Petition for Rule Making ("Petition") filed pursuant to Sections 1.401 and 1.420(i) of the Commission's Rules.¹ LSM Radio respectfully requests that the Commission institute a rule making proceeding to substitute Channel 289C1 for Channel 288C2 at Marathon, Florida, reallocate Channel 289C1 to Sugarloaf Key, Florida, and modify the community of license of station WAVK(FM) to operate on Channel 289C1 at Sugarloaf Key. As shown below, the reallocation would provide Sugarloaf Key with its first local service, but will not result in the removal of the only local broadcast service from Marathon. Hence, the reallocation constitutes a preferential arrangement and improved service to the public. In support thereof, the following is hereby shown:

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List ABOVE

MB 03-344

¹ Section 1.420(i) provides that "(i) In the course of the rulemaking proceeding to amend §73.202(b) ... the Commission may modify the license of an FM broadcast station to specify a new community of license where the amended allotment would be mutually exclusive with the licensee's or permittee's present assignment."

I. Technical Compliance

The Petition proposes modifications to the FM Table of Allotments to substitute Channel 288C2 with Channel 289C1 at Marathon, Florida, reallocate Channel 289C1 to Sugarloaf Key, Florida, and modify the community of license of station WAVK(FM) to operate on channel 289C1 at Sugarloaf Key, Florida. These changes will require modification of the current WAVK(FM) authorization to change the community of license for the station from Marathon to Sugarloaf Key with a relocation of the transmitter site to new reference coordinates.² The community of Sugarloaf Key is not located within the defined boundaries of any urbanized areas and the proposed 70 dBu contour will not cover more than 50% of any urbanized area. As such, this proposal is not considered a relocation from a rural market to an urbanized area.

Petitioners seeking to change community of license pursuant to Section 1.420(i) must propose a channel that is mutually exclusive with the existing station's channel, and the new community must be preferred over the existing community pursuant to the Commission's FM allotment priorities.³ As detailed in the attached Engineering Statement,⁴ the proposed allotment comports with the Commission's minimum-distance separation requirements as outlined in Section 73.207(b) of the Commission's rules. The proposed allotment of Channel 289C1 to Sugarloaf Key is mutually exclusive with the existing allotment of that channel at Marathon, and the Sugarloaf Key allotment would provide the requisite principal-community coverage to the entire community of Sugarloaf Key.⁵

² The reference coordinates are 24 37 07 N and 81 31 48 W. See Engineering Statement of Robert M. Smith, attached as Exhibit 1 ("Engineering Statement").

³ See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("FM Priorities").

⁴ See Engineering Statement.

⁵ See *Id*.

WAVK(FM) currently operates as one of four commercial broadcast stations licensed to Marathon, Florida.⁶ Because Marathon will continue to be served by three commercial radio stations, the proposed relocation of WAVK(FM) would not result in the removal of Marathon's sole local transmission service. Furthermore, the Engineering Statement shows that the service areas associated with Marathon will retain aural service; thus, the transmitter relocation associated with the allotments proposed herein will create no underserved areas.

In addition, as described below, Sugarloaf Key is a preferred community to Marathon because it will result in first local service to Sugarloaf Key and the gain area and loss areas are both considered well-served.⁷

II. Community of License – Sugarloaf Key, Florida

LSM Radio requests a change in its authorized community of license for WAVK(FM) from Marathon to Sugarloaf Key, Florida, through the deletion of the current allotment of Channel 288 at Marathon, the relocation of that channel to Sugarloaf Key, and modification of the community of license for WAVK(FM) accordingly. In accordance with the *FM Priorities*,⁸ the allocation represents an enhanced allotment priority over retention of the allotment in Marathon because the allocation will result in the introduction of a first local service to Sugarloaf Key. First local service constitutes a priority (3) under the *FM Priorities*, while retention of the existing station at Marathon represents at best a priority (4) in light of the other radio stations licensed to that community.⁹

⁶ Data from the FCC Audio Division's website indicates that WFFG(AM), WGMX(FM) and WWWK(FM) would continue to serve Marathon

⁷ See Engineering Statement

⁸ See *Revision of FM Assignment Policies and Procedures*, 99 FCC 2d 88 (1988).

⁹ The FM allotment priorities are (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local service, and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). *Id*

Sugarloaf Key possesses characteristics demonstrative of a community. The Sugarloaf Key community has a population of 1,528 persons.¹⁰ The origin of the community's name came from its resemblance to a loaf of sugar and sugarloaf pineapples, which were abundantly grown in the area in the late nineteenth and twentieth centuries. In the late 1800's to the early 1900's, the town thrived on a sponge and pineapple business called the Florida Keys Sponge & Fruit Company. In 1927, Richter Perkey, a real estate developer, attempted to develop Sugarloaf Key into a resort. In order to deal with the mosquito problem, Perkey built a tower to attract bats to control the mosquito population. Today, the tower is a town landmark called Perky Bat Tower.

Sugarloaf Key has its own zip code and until recently its own branch of the U.S. Postal Service, both of which are indicative of an established community.¹¹ Sugarloaf Key has its own public school, "Sugarloaf Elementary/Middle School," which enrolls students from neighboring towns,¹² a volunteer fire department and an airport.¹³ The Sugarloaf Baptist church is located in Sugarloaf Key.¹⁴ Numerous restaurants and companies are located in Sugarloaf Key, including Bay Point Gourmet Pizza, Mangrove Mama's, Old Tyme Keys Atmosphere, Crystal Seas Kayaking, Fantasy Dan's Airplane Rides, and Tommy's Tire & Auto Services. Sugarloaf Key also has its own bank branch called First State Bank of the Florida Keys.

Sugarloaf Key has several restaurants and businesses that identify themselves as being part of the community of Sugarloaf Key, including the Sugarloaf Lodge Restaurant, Sugarloaf Sports & Leisure Club, Sugarloaf Resort-KOA and Sugarloaf Marina.

¹⁰ See Exhibit 1

¹¹ See Exhibit 2

¹² *Id*

¹³ *Id*

¹⁴ *Id*

Based on the foregoing facts, Sugarloaf Key qualifies as a community for reallocation of Channel 288 from Marathon, Florida, to Sugarloaf Key, Florida, as that community's first local service.

LSM Radio hereby states in the event that the Commission makes the proposed changes to the FM Table of Allotments for WAVK(FM), LSM Radio will timely file the necessary application for a construction permit for a new station and will construct the new facility in a timely manner.

CONCLUSION

The instant Petition proposes the following Changes to the FM Table of Allotments:

<u>Community</u>	<u>Current</u>	<u>Channel No.</u>	<u>Proposed</u>
Marathon, Florida	232C2, 249A, 288C2		232C2, 249A
Sugarloaf Key, Florida	----		289C1

This proposal will serve the public interest by providing Sugarloaf Key, Florida, with its own first local service. Marathon, Florida, which currently has local service, would still retain a local service. For these reasons, LSM Radio respectfully requests that the FCC initiate and approve this rule making proceeding to modify the FM Table of Allotments as proposed herein to provide improved service to the local communities involved, which will result in a greater benefit to the public.

WHEREFORE, FOR THE FOREGING REASONS, LSM Radio Partners LLC respectfully requests that the Commission issue a Notice of Proposed Rule Making in connection with the proposal outlined in this Petition for Rule Making and modify Section 73.202(b) accordingly.

Respectfully submitted,

LSM RADIO PARTNERS LLC

A handwritten signature in black ink, appearing to read 'D. O'Neil', is written over a horizontal line.

David G. O'Neil

Elise Dang

MANATT, PHELPS & PHILLIPS, LLP

1501 M Street, N.W.

Suite 700

Washington, DC 20005

(202) 463-4300

September 29, 2003

Its Counsel

EXHIBIT 1

R. M. SMITH ASSOCIATES
BROADCAST TECHNICAL CONSULTANTS
4267 NW FEDERAL HIGHWAY #120 - JENSEN BEACH, FL 34957
(561) 335-0688 FAX (561) 335-1438
E-MAIL Rmsradio@aol.com

ENGINEERING STATEMENT

**IN SUPPORT OF
PETITION FOR RULE MAKING**

BY:

LSM RADIO PARTNERS, LLC

September 2003

PURPOSE AND SCOPE

The Petition, of which this Statement is a part, requests a modification of the FCC FM Table of Allotments in 47 CFR §73.202 by deleting the allotment of channel 288C2 at Marathon, FL, and adding an allotment 289C1 at Sugarloaf Key, FL. The results of these changes are: WAVK(FM)'s (FCC Facility ID 34355) principal community changes from Marathon, FL (on channel 288C2) to Sugarloaf Key, FL (on channel 289C1) as that community's first local service.^{1/}

This Statement supports the Petition by showing that the new allotment complies with applicable spacing requirements, provides 70 dBu coverage to the principal community of the new allotment, provides 60 dBu coverage to a larger population than does the present allotment scheme and is mutually exclusive with the present allotment.

ALLOTMENT SITE

CHANNEL 289C1 AT SUGARLOAF KEY, FL

A computerized search of the FCC's CDBS FM database shows that an allotment site specified at N24-37-07, W81-31-48 is fully spaced per the requirements of 47 CFR §73.207(b)(1) to all domestic stations/allotments.

PRINCIPAL COMMUNITY COVERAGE

Figure 1 is a portion of a 25% reduction of a USGS 1:100,000 scale Topographic Series map on which are plotted the political boundaries of Sugarloaf Key, FL and the 70 dBu contour of a full Class C1 facility (100 kW, 299 meters HAAT) at the proposed reference coordinates. The 70 dBu F(50,50) contour from the proposed allotment site encompasses all of Sugarloaf Key, FL. The point in Sugarloaf Key farthest from the allotment site is less than 12 kilometers from the site. A class C1 standard 70 dBu contour of 50.0 km also encompasses all of Sugarloaf Key.

^{1/} Marathon, FL will retain local service from WGMX(FM), WWWK(FM) and WFFG(AM).

PRESENT VERSUS PROPOSED SERVICE

The present WAVK(FM) facility's 60 dBu contour encompasses an area of 2011 square kilometers and 11,901² persons. The 60 dBu contour from the proposed operation of Channel 289C1 in Sugarloaf Key, FL covers 15,331 square kilometers and 55,232 persons. A modification of the Table of Allotments, as proposed in this Petition will result in an increase of 43,331 persons (a 364% increase) receiving 60 dBu service from WAVK(FM).

The operation of WAVK(FM) on 289C1 at Sugarloaf Key, FL will provide the first local service to that community.

ALLOTMENT IMPROVEMENT

The channel 288 allotment at Marathon, FL is a class C2 allotment. The allotment for channel 289 at Sugarloaf Key, FL is a class C1 allotment.

MUTUAL EXCLUSIVITY

The proposed allotment site for channel 289C1 at Sugarloaf Key, FL is 51.6 kilometers from the antenna site for WAVK(FM) 288C2, in Marathon, FL. 47 C.F.R. § 73.207 requires first adjacent class C2 and C1 facilities to be separated by 158 kilometers. No combination of sites exists that allow simultaneous service to Marathon on channel 288C2 and Sugarloaf Key on channel 289C1.

OTHER AURAL SERVICES

Only one loss areas is definable. This is the area within the present 60 dBu coverage of WAVK(FM) which is outside the proposed 60dBu coverage of WAVK(FM).

Figure 2 is a plot of the loss area and the protected service contours of various five FM stations in the area near WAVK(FM). Four of the stations (WGMX(FM), WKYZ(FM), WCTH(FM) and WFKZ(FM)) provide 60 dBu or better coverage to the entire loss area. WZMQ(FM) provides 60 dBu or better coverage to all land areas within the loss area. No land areas are underserved as a result of this proposal.

2/ All population figures in this Statement are from the 2000 U.S. Census.

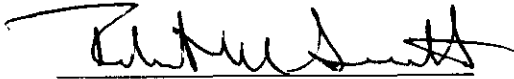
SUMMARY

The proposed changes to the Commission's Table of Allotments will result in the following improvements in the use of the spectrum:

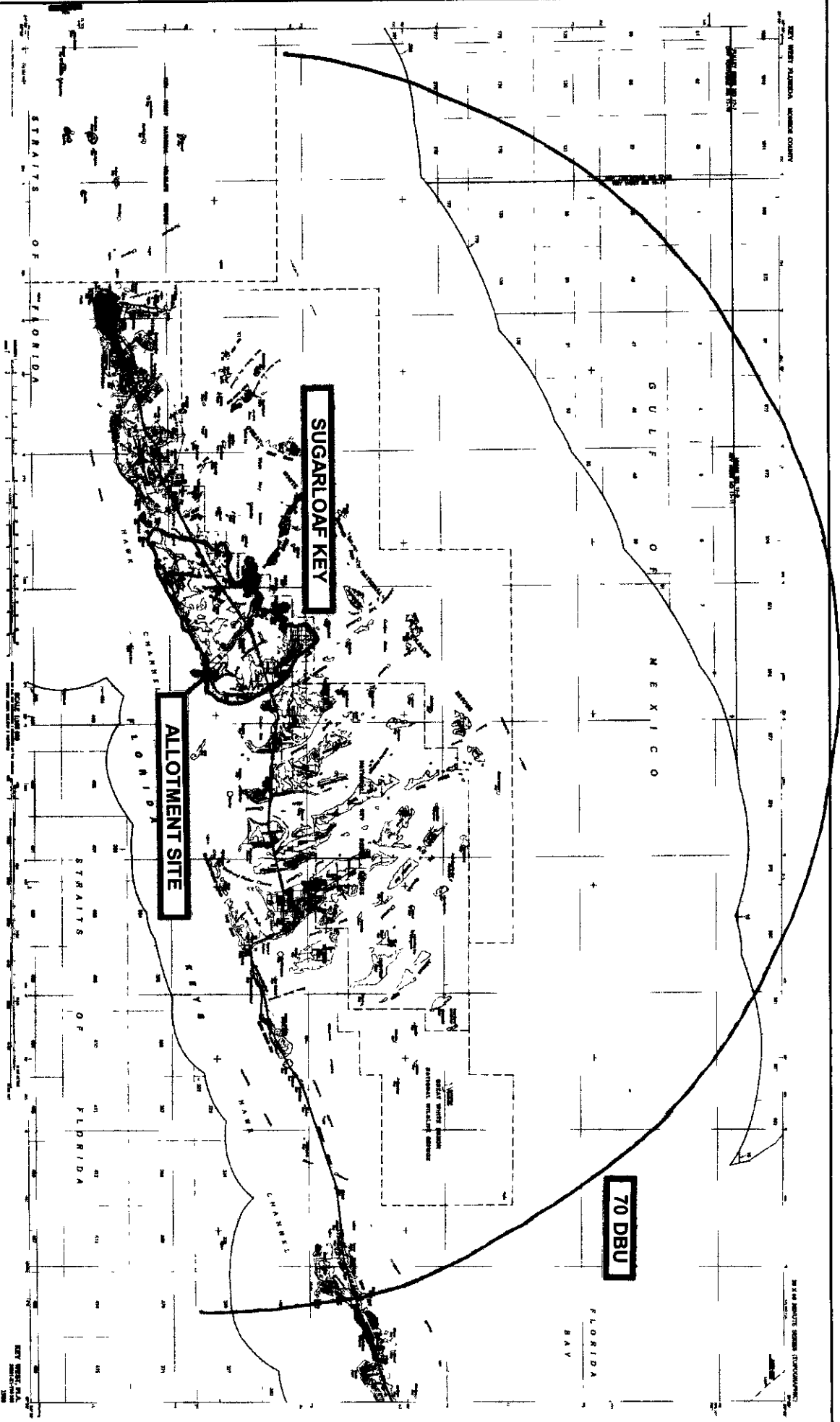
1. Sugarloaf Key, FL receives its first local service
2. A total of 43,331 more people receive 60 dBu service than at present
3. A C2 Allotment is replaced with a C1 allotment.

CERTIFICATION

I, Robert M. Smith Jr., of Port St. Lucie, FL, do hereby certify that all of the data, calculations and statements in this application are true and correct to the best of my knowledge and belief. I further certify that I am an experienced and qualified broadcast engineer and that my qualifications are a matter of record with the Commission.

A handwritten signature in black ink, appearing to read 'Robert M. Smith Jr.', written over a horizontal line.

Robert M. Smith Jr.



LSM RADIO PARTNERS, LLC

FIGURE 1

EXHIBIT 2

30159784 1



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Alachua	32615	Alachua
Alachua	32616	Alachua
Alford	32420	Jackson
Alligator Point	32346	Franklin
Altamonte Springs	32701	Seminole
Altamonte Springs	32714	Seminole
Altamonte Springs	32715	Seminole
Altamonte Springs	32716	Seminole
Altha	32421	Calhoun
Altoona	32702	Lake
Alturas	33820	Polk
Alva	33920	Lee
Amelia City	32034	Nassau
Anna Maria	34216	Manatee
Anthony	32617	Marion
Apalachicola	32320	Franklin
Apalachicola	32329	Franklin
Apollo Beach	33572	Hillsborough
Apopka	32703	Orange
Apopka	32704	Orange
Apopka	32712	Orange
Arcadia	34265	DeSoto
Arcadia	34266	DeSoto
Archer	32618	DeSoto
Argyle	32422	Walton
Aripeka	34679	Pasco
Astatula	34705	Lake
Astor	32102	Lake
Atlantic Beach	32233	Duval
Atlantis	33462	Palm Beach
Auburndale	33823	Palm Beach
Avon Park	33825	Highlands
Avon Park	33826	Highlands
Babson Park	33827	Polk

Sebastian	32978	Indian River
Sebring	33870	Highlands
Sebring	33871	Highlands
Sebring	33872	Highlands
Seffner	33583	Hillsborough
Seffner	33584	Hillsborough
Seminole	33772	Pinellas
Seminole	33775	Pinellas
Seminole	33776	Pinellas
Seville	32190	Volusia
Sewall's Point	34996	Martin
Shady Grove	32357	Taylor
Shalimar	32579	Okaloosa
Sharpes	32959	Brevard
Silver Springs	34488	Marion
Silver Springs	34489	Marion
Sneads	32460	Jackson
Sopchoppy	32358	Wakulla
Sorrento	32776	Lake
South Bay	33493	Palm Beach
Southport	32409	Bay
Sparr	32192	Marion
Spring Hill	34606	Hernando
Spring Hill	34607	Hernando
Spring Hill	34608	Hernando
Spring Hill	34611	Hernando
Starke	32091	Bradford
Steinhatchee	32359	Taylor
Stuart	34994	Martin
Stuart	34995	Martin
Stuart	34996	Martin
Stuart	34997	Martin
Sugarloaf Shores	33044	Monroe
Sumatra	32335	Liberty
Summerfield	34491	Marion
Summerfield	34492	Marion
Summerland Key	33042	Monroe
Sumterville	33585	Sumter
Sun City	33586	Hillsborough
Sun City Center	33571	Hillsborough
Sun City Center	33573	Hillsborough
Sunnyside	32461	Bay
Sunrise	33313	Broward
Sunrise	33319	Broward
Sunrise	33322	Broward
Sunrise	33323	Broward
Sunrise	33325	Broward
Sunrise	33326	Broward



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MONROE COUNTY SCHOOLS

Glynn Archer Elementary (PreK - 5)	Principal: Dr. Rita Sawyer 1302 White Street Key West, Fl 33040 (305) 293-1600/strong>
Key Largo School (PreK - 8)	Principal: Frances St. James 104801 Overseas Key Largo, Fl 33037 (305) 453-1255
Marathon High (7-12)	Principal: Dr. Fred Colvard 350 Sombrero Rd Marathon, Fl 33050 (305) 289-2480
Poinciana Elementary (PreK-5)	Principal: Pedro Fraga 1212 14th Street Key West, Fl 33040 (305) 293-1630
Stanley Switlik Elementary (PreK-6)	Principal: Barbara Wright 3400 Overseas Hwy Marathon, Fl 33050 (305) 289-2490
Horace O'Bryant Middle School (6-8)	Principal: Frank Spoto 1105 Leon Street Key West, Fl 33040 (305) 296-5628
Key West High (9-12)	Principal: John Welsh 2100 Flagler Ave Key West, Fl 33040 (305) 293-1549
Plantation Key School (PreK - 8)	Principal: Sandi Bisceglia 100 Lake Road Tavernier, Fl 33070 (305) 853-3281
Sigsbee Elementary School (PreK-5)	Principal: Dr. Rita Sawyer Sigsbee Park Key West, Fl 33040 (305) 294-1861
Sugarloaf School (K-8) Big Pine School (PreK-2)	Principal: Theresa Axford RR #2 Crane Road Sugarloaf Key, Fl 33044 (305) 745-3282

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Florida Highway Patrol:
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U.S. Coast Guard:
Upper Keys Volunteer Search and Rescue:

Emergency

Health

Services:

Hospitals:
Veterans Affairs:

Florida State

Services:

Clerk of the circuit courts:
Florida dept. of agriculture and consumer services:
Environmental protection:
Game and Fresh Water Fish commission:
Highway safety and motor vehicle dept. :
Public defender's office:
State attorney's office:
State of Florida general info:

Florida State

Parks:
Indian Key State Historic Site:
Lignumvitae Key State Botanical Site:
Long Key State Recreation Area:
Bahia Honda State Recreation Area:
Ft. Zachary Taylor State Historic Site:
Vehicle/Boat Registration:

Government

Services:

Crocodile Lake Wildlife Refuge:
Everglades National Park:
Florida Keys National Marine Sanctuary:
Great White Heron National Wildlife Refuge:
Key West National Wildlife Refuge:
National Key Deer Wildlife Refuge:
Passport Offices:
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County

Services:

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English



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Monroe county sheriff's department:

Upper (m.m. 64 to m.m. 112)	305-853-3211
Middle (m.m. 40 to m.m. 63)	305-289-2430
Lower (m.m. 0 to m.m. 39)	305-745-3814
Key West	305-296-2424
or	1-800-273-2677

Fire and rescue dept. (Non-Emergency)

Ocean Reef	305-367-4357
Key Largo Volunteer Fire Dept. (North)	305-451-2701
Key Largo Volunteer Fire Dept. (South)	305-451-2700
Key Largo Volunteer Ambulance Corp	305-451-2766
Tavernier Volunteer Fire Department	305-852-9860
Islamorada Volunteer Fire Department	305-664-4559
Layton Volunteer Fire Department	305-664-4667
Conch Key Volunteer Fire Department	305-289-1313
Marathon Volunteer Fire Department	305-743-5266
Big Pine Key Volunteer Fire Department	305-872-2844
Sugarloaf Volunteer Fire Department	305-743-3665
Big Coppitt Volunteer Fire Department	305-294-9419

Police dept. :

Key Colony Beach Police	305-743-5380
Key West	305-294-2511

Florida Highway Patrol:

Upper	305-853-3200
Middle	305-289-2300
Lower	305-292-6711

Florida Marine Patrol:

Marathon	305-289-2320
After 5 pm	1-800-dial-fmp

U.S. Coast Guard:

Upper	305-664-4404
Middle	305-743-6388
Lower	305-297-8856

Upper Keys Volunteer Search and Rescue:

Volunteer	305-451-3347
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Emergency Health Services:**Hospitals:**

Mariners m.m. 89	305-852-4418
Women's Healthcare	
Sanford L. Yankow M.D.	305-453-0120
100430 Overseas	
Highway	Fax: 305453-7879
Key Largo, FL, 33037	
Fisherman's m.m. 48.5	305-743-5533
Lower Keys m.m. 5	305-294-5531

Veterans Affairs:

Upper	305-852-7104
Middle	305-289-6009
Lower	305-295-5150
Toll Free	1-800-827-1000

Public Health Department:

Upper	305-853-3240
Middle	305-289-2450
Lower	305-292-6894

Government Services:

**Crocodile Lake Wildlife
Refuge** 305-872-2239

Everglades National Park:

Key Largo 305-852-0304
Headquarters 305-242-7700

**Florida Keys National
Marine Sanctuary** 305-292-0311

**Great White Heron
National Wildlife
Refuge** 305-872-2239

**Key West National
Wildlife Refuge** 305-872-2239

**National Key Deer
Wildlife Refuge** 305-872-2239

Passport Offices:

Middle Keys (County
Court House) 305-743-0079

U.S. Customs:

Upper 305-664-2955
Lower 305-296-5411

U.S. Post Offices:

Key Largo (m.m. 100) 305-451-3155
Tavernier (m.m. 92) 305-852-5255
Islamorada (m.m. 83) 305-664-4738
Long Key (m.m. 68.5) 305-664-4112
Key colony Beach (m.m.
53.5) 305-743-2249
Marathon Shores (m.m.
52.5) 305-743-6050
Marathon (m.m. 50) 305-743-5238
Big Pine Key (m.m. 30) 305-872-2531
Summerland (m.m. 24.5) 305-745-3391
Sugarloaf Key (m.m. 20) 305-745-3211
Key West 305-294-2557

Florida State Services:**Clerk of the circuit courts:**

Upper	305-852-7145
Middle	305-289-6025
Lower	305-292-3550

**Florida dept. of agriculture and
consumer services:**

Toll free	1-800-435-7352
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Environmental protection:

	305-289-2310
Toll free	1-800-342-5367

**Game and Fresh Water Fish
commission:**

Emergency Only	1-800-432-2046
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**Highway safety and motor
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Upper	305-853-3562
Middle	305-289-2306
Lower	305-292-6747

Public defender's office:

Upper	305-853-3562
Middle	305-289-2306
Lower	305-292-6747

State attorney's office:

Upper	305-852-7170
Middle	305-743-9471
Lower	305-292-3400

State of Florida general info:

General information 1-850-488-1234

Florida State Park Service:

John Pennekamp Coral

reef State Park 305-451-1202
m.m. 102.5 Key Largo

Indian Key State

Historic Site: 305-664-4815
m.m. 79 Islamorada

Lignumvitae Key State

Botanical Site: 305-664-4815
m.m. 79 Islamorada

Long Key State

Recreation Area: 305-664-4815
m.m. 68

Bahia Honda State

Recreation Area: 305-872-2353
m.m. 36.5

Ft. Zachary Taylor

State Historic Site: 305-292-6713
Key West

Vehicle/Boat Registration:

Upper 305-852-7150
Middle 305-743-5585
Lower 305 294-8403

County Services:

Animal Shelters:

Upper 305-451-0088
Marathon 305-743-3779
Big Pine Key 305-872-3412
Lower Keys 305-294-4857

Florida Keys community College:

Upper 305-852-2737
Middle 305-743-2133
Lower 305-296-9081

Jury courts-clerk:

Plantation 305-852-7178

Marathon	305-289-6091
Big pine Key	305-289-6090
Key West	305-294-4641

Licenses:

Auto/Boat:

Upper	305-852-7150
Middle	305-743-5585
Lower	305-295-5000

Marriage Licenses:

Upper	305-852-7145
Middle	305-289-6027
Lower	305-294-4691

Public Libraries:

Key Largo (m.m. 101.5)	305-451-2396
Islamorada (m.m. 81.5)	305-664-4645
Marathon (m.m. 48.5)	305-743-5156
Key West (Flemming St.)	305-292-3595

Monroe County Social Services:

Upper	305-852-7125
Middle	305-289-6016
Lower	305-292-4408

Public Schools:

Links to public school's

Key Largo Elementary School	305-451-1511
m.m. 105	
Key Largo Middle School	305-451-1511
m.m. 105	
Plantation Key School	305-853-3281
m.m. 90	
Coral Shores High School	305-853-3222
m.m. 90	

Marathon High School 305-289-2480
m.m. 50
Stanley Switlik
Elementary School 305-289-2490
m.m. 49
Sugarloaf
Elementary/Middle School 305-745-3282
m.m. 20

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